



May 7, 2020

Sheriff Rick Reigenborn
Adams County Sheriff
332 N. 19th Ave.
Brighton CO 80601

Re: Investigation of the officer-involved shooting of Keith Bruce, DOB 9/28/79, occurring on November 29, 2019, in unincorporated Adams County, Colorado.

Dear Sheriff Reigenborn,

The investigation and legal analysis of the officer-involved shooting of Keith Bruce occurring on November 29, 2019, is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted this investigation. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. Thornton Police Department Detective Robin Danni presented the CIIT factual findings of the investigation to my office on February 26, 2020. The CIIT presented police reports, videos, audio interviews, and transcripts of the interviews of witnesses, along with photographs as well as the scene investigation. The Office of the District Attorney concludes that the investigation was thorough and complete.

This review is strictly limited to determining whether criminal charges are warranted against the involved officer based on the CIIT investigation. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a unanimous jury. Here, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified under Colorado law.

This review expressly does not evaluate the appropriateness of the actions of the involved officer, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency are sufficient. That evaluation is left to each individual agency.

As further set forth herein, based on the evidence presented and applicable law, there is no reasonable likelihood of success of proving that Deputy Kyle Bacon committed any crime beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against Adams County Sheriff Deputy Kyle Bacon.

STATEMENT of FACTS¹

On November 29, 2019, Adams County Sheriff Deputy Kyle Bacon started his assigned shift at approximately 6:30 a.m. He was in a full Adams County Sheriff Office (ACSO) uniform and was driving a clearly marked ACSO assigned patrol SUV. As standard ACSO issue, Deputy Bacon had a .40 caliber handgun and a .233 caliber Smith and Wesson MP15 rifle in his patrol SUV.

As part of his patrol duties in a rural portion of east Adams County, at approximately 7:10 a.m. Deputy Bacon went to the Tomahawk truck stop at 1695 N. Watkins Road. Deputy Bacon would later report that he went to this location because he knew from previous experience that this location is a relatively high crime area, with stolen cars, abandoned vehicles and drug dealing. As Deputy Bacon patrolled the truck stop on the north side, he noticed a 2000 white Ford F350, pickup truck parked in a location not commonly used for passenger vehicles. Because the pickup truck was in a suspicious location, Deputy Bacon did a computer check, and the license plate came back to a reported auto theft from the Caraveo Construction Company approximately five days ago.

Deputy Bacon saw a male party, later identified as Keith Bruce, apparently sleeping in the driver seat of the stolen pickup truck. Deputy Bacon moved his marked patrol SUV into a position to minimize a potential escape. As Deputy Bacon approached the pickup truck to investigate, he gave commands to Keith Bruce. Keith Bruce awoke, and Deputy Bacon reported that Keith Bruce promptly started the truck and “threw [the truck] in reverse and then as he came forward the truck started...skidding on the ice, came right at my patrol car and the backend fishtail[ed] around almost striking me.” Deputy Bacon estimated that the truck came within a foot of striking him and he concluded Keith Bruce was “trying to hit [him]” and he would use whatever means possible to escape. At 7:12 a.m., Deputy Bacon advised dispatch of the attempted assault and his pursuit of the fleeing Keith Bruce in the stolen truck. The Tomahawk truck stop did not have video surveillance of this exterior area.

Keith Bruce fled the truck stop, went north on Watkins Road, and then northeast on Highway 36 / East Colfax Avenue with Deputy Bacon following him with lights and sirens activated.² Although it had recently snowed and it was cold and foggy that morning, Keith Bruce continued to elude Deputy Bacon at speeds of approximately 70 miles per hour. As Keith Bruce passed Imboden Road, Deputy Bacon observed Mr. Bruce throw unknown items from the stolen truck.³ E.W.⁴ later reported he was travelling westbound on Highway 36/East Colfax Avenue that morning and he saw a

¹ The Statement of Facts are culled from the overall CIIT investigation and is presented here largely chronological order.

² Keith Bruce eluded Deputy Bacon for over 5 miles. Only the most factually significant portions of the flight are recounted here.

³ During the subsequent investigation, CIIT found near Manilla Road and Highway 36 / East Colfax, among other things, a laptop, a small grocery bag of clothes, and gloves laying on top of the snow

⁴ I use initials to maintain the privacy of citizen-witnesses.

large pickup truck coming at him in the wrong lane of traffic, and E.W. swerved when he was within 30 feet, narrowly avoiding a head-on collision with the truck. Keith Bruce continued at a high speed northeast on Highway 36/East Colfax Avenue and Deputy Bacon continued to pursue him with his lights and sirens activated.

At 7:15 a.m., Deputy Bacon advised dispatch that Keith Bruce had fired shots at him. One minute later, Deputy Bacon reported that Keith Bruce had fired six (6) more shots at him. Deputy Bacon reported that he saw Keith Bruce lean out the driver's window with a handgun and shoot at him again. Keith Bruce gunshots hit the ACSO patrol SUV in the driver's front headlight. Although Deputy Bacon backed off to avoid being shot at again, he continued to pursue Keith Bruce at a safe distance.



The bullet strike is in upper right of circle and resulting debris in the middle of circle

Keith Bruce continued eastbound on Highways 36/East Colfax Avenue. As he neared Peterson Road, Deputy Bacon reported in his recorded interview that he saw Keith Bruce as "he jumped out of the driver's seat, fired a round [at me], [and the] truck rolled down into the ditch. [Bruce] ran south [though a field] and went towards... a single family home." Deputy Bacon said in his interview that, "[Bruce] ran towards [the home], stopped at the edge [of the field approximately 70 yards away] and pointed the gun straight at me, I could see the gun still in his hand, and he fired [another] round [me]." Keith Bruce was running toward a single family home that Deputy Bacon was

familiar with. He knew that a family with young children lived there⁵, and Deputy Bacon feared additional potential violence and/or a hostage situation might occur. Deputy Bacon said that he was terrified and he believed Keith Bruce would continue to shoot at him. Deputy Bacon retrieved his MP15 rifle and concluded that, "I couldn't let him go any farther, I had no other option but to stop him right there."



Shown are the stopping points for Keith Bruce and the stolen truck in the field, and Deputy Bacon's patrol car at bottom right corners on Highway 36 East Colfax.

As Keith Bruce ran through the field towards the home, he turned and shot again at Deputy Bacon and the deputy felt, "he was trying to kill me." Deputy Bacon saw Keith Bruce turn and fire over his shoulder back at him, as Mr. Bruce ran towards the nearby home. Deputy Bacon estimated that Keith Bruce had shot at him approximately "8 or 9" times.⁶ Although the weather conditions were poor, Deputy Bacon could see Keith Bruce, so he returned fire in his effort to stop Keith Bruce. Deputy Bacon estimated that he then shot four times⁷ at the fleeing Keith Bruce. The subsequent CIIT investigation recovered at the scene five spent shell casings from Deputy Bacon's MP15 rifle.

⁵ Fortuitously, the family was not home at this time. This home is listed as either 2625 E. Colfax Ave. or alternatively as 2625 N. Peterson Road, as reported by the homeowner.

⁶ Perhaps attributable to the weather conditions, the length of the pursuit, and the vegetation in the field, no shell casings from Keith Bruce's handgun were located.

⁷ Deputy Bacon could not recall exactly how many rounds he had previously loaded into the MP15 rifle, but estimated he had 28 rounds in the rifle. The CIIT investigation found 22 rounds in the rifle.

From an estimated distance of approximately more than 400 feet, Deputy Bacon shot and struck Keith Bruce. Keith Bruce fell down but continued to move on the ground. Additional backup officers from the Colorado State Patrol, the Aurora Police Department, and the Arapahoe County Sheriff's Office responded to this location. Consistent with Deputy Bacon's report, all of the responding officers reported that they arrived at this rural location after the shooting of Keith Bruce. With the additional officers, they approached Keith Bruce as he lay in the field. When the officers reached Keith Bruce, they found near his hand a 9mm handgun and a pistol holster in his waistband. Officers provided first aid to Keith Bruce, but he eventually died as a result of the gunshot wounds.



This photo was taken after the responding officers arrested Keith Bruce and moved the handgun away from his reach.

On December 2, 2019, forensic pathologist Dr. Stephen Cina conducted an autopsy on Keith Bruce. Dr. Cina found Keith Bruce had been shot three times: a penetrating gunshot wound to the chest; a perforating gunshot wound to the right forearm; and a perforating gunshot wound in the groin area. Dr. Cina opined that the gunshot to the mid chest was the most serious injury, and perhaps the fatal wound. Dr. Cina concluded that Mr. Bruce's cause of death was a result of his gunshot wounds and the manner of death was a homicide. Dr. Cina's autopsy also determined that Keith Bruce "had been using methamphetamine prior to his death."

It is significant, albeit unfortunate, to note that during the course of this

investigation, CIIT interviewed Z.S. the mother of Keith Bruce's children. She confirmed his long-standing drug abuse. Moreover, Z.S. reported that Keith Bruce told her in the past that he would not go back to prison and that he told her that, "maybe I'll go out in a blaze of glory and take a few with [me]." Keith Bruce had four prior felony convictions (Mesa County, 04CR45; Gunnison County, 04CR55; Mesa County, 05CR1449; and Jefferson County, 15CR2944). Previously, in 2004 in Mesa County, Keith Bruce had been convicted of the attempted murder of a police officer, in which he was sentenced to ten years in the Colorado Department of Corrections. On the day of this event, Boulder County (19CR163) had an active arrest warrant for Keith Bruce for burglary.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of a criminal offense have been committed and it is proved that the offense was committed without legal justification, as set forth in Colorado statutes. The justification for a peace officer's use of physical force while attempting to make an arrest or preventing an escape is set forth in §18-1-707, C.R.S. (2019). As pertinent to this case, §18-1-707(1), C.R.S. provides:

[A] peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

- (a) To effect an arrest unless he knows that the arrest is unauthorized; or
- (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest.

Additionally, §18-1-707(2), C.R.S. provides that:

A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - (II) Is attempting to escape by the use of a deadly weapon; or
 - (III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury' to another unless apprehended without delay.

When a police officer has probable cause to believe that a suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using extreme physical force. Tennessee v. Garner, 471 U.S. 1 (1985). This constitutional law is embedded in Colorado by §16-3-101(2) C.R.S. (2019). Consequently, Colorado law allows that all necessary and reasonable force may be used in making an arrest.

In the context of defense of others, under Colorado law all people are lawfully entitled to rely on the doctrine of "apparent necessity," so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. People v. La Voie, 155 Colo. 551, 395 P.2d 1001 (1964); People v. Silva, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officer or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken. These principles are well settled in Colorado law.

It is not in dispute that Deputy Bacon was performing lawful duties as a peace officer at the time of this incident. It is also not in dispute that during the course of these duties, he shot and caused the death of Mr. Bruce. Here, the issues in this case are whether Deputy Bacon's use of deadly physical force was justified and whether the force used was reasonable. As the United States Supreme Court has mandated, the test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. Graham v. Connor, 490 U.S. 386 (1989). Alternatively phrased, the question here is whether a reasonable police officer, confronted with the same facts and circumstances, could have concluded that it was necessary to discharge his firearm to effect an arrest and/or to defend another (the citizens in the home) and/or to defend himself and to stop the threat that Keith Bruce presented.

APPLICATION of LAW

Under the particular facts of this case, several provisions of Colorado law may legally justify the actions of Deputy Bacon, under the totality of the circumstances present on November 29, 2019.

Deputy Bacon was attempting to arrest Keith Bruce for the possession of the stolen truck. Although not known to Deputy Bacon at the time, he was also authorized to arrest Keith Bruce for the outstanding arrest warrant for burglary. Thus, it would be difficult to prove beyond a reasonable doubt to a jury that Deputy Bacon was not justified in his use of force to arrest Keith Bruce.

Keith Bruce exacerbated this situation when he used the stolen truck as a deadly weapon to escape, nearly striking Deputy Bacon. Keith Bruce had previously said he would not go back to prison, and his actions on November 29, 2019, confirmed his declaration. Moreover, Keith Bruce also fired his handgun multiple times at Deputy Bacon. Given the use of two deadly weapons against Deputy Bacon, it would be

difficult to prove beyond a reasonable doubt to a jury that this peace officer was not legally justified in resorting to the use of force.

Finally, it was objectively reasonable to conclude that when Keith Bruce inexplicably drove the stolen truck off the road and was running through a snow-covered field, he may have intended harm to the residents in the only nearby home in this rural area. There is no other explanation as to why Mr. Bruce would run to the only home in the area other than to prevent his arrest no matter what the consequences were to others. Therefore, it would be difficult to prove beyond a reasonable doubt to a jury that Deputy Bacon was not legally justified in using his firearm, to defend other people from Keith Bruce's ongoing violent flight.

CONCLUSION

Under the totality of the circumstances of this investigation, the Office of the District Attorney for the 17th Judicial District cannot prove beyond a reasonable doubt to a jury that the actions of Deputy Kyle Bacon were not justified under Colorado law. We would have to prove that Deputy Bacon was not legally justified to use reasonable and necessary force to arrest Keith Bruce and/or to prevent his escape after using two deadly weapons. CRS Sections 18-1-707(1) and 18-1-707(2). Additionally, when Keith Bruce shot several times at Deputy Bacon and then ran toward a home, we would have to prove that Deputy Bacon's actions were not justified by Colorado's self-defense and defense of others laws. In other words, Colorado law concerning a peace officer's ability to use force in making an arrest of a fleeing dangerous and armed felon, and/or the law of defense of others and/or self-defense, which may provide sufficient legal justification(s) for Deputy Bacon's actions.

In order to file criminal charges, the prosecution is legally required to prove criminal conduct and disprove beyond a reasonable doubt to a unanimous jury the validity of the foregoing multiple affirmative defenses. Under the facts presented here, I conclude that there is no likelihood of success of proving any criminal charges against ACSO Deputy Kyle Bacon at trial and therefore no charges will be filed.

Please let me know if you have further information for my Office to review or if you have any questions regarding this letter.

Sincerely,



Dave Young
District Attorney
17th Judicial District
Adams and Broomfield Counties